

Submitted by:


Adam Salgado

SIGNATURE ROUTING SHEET

DATE: September 28, 2017

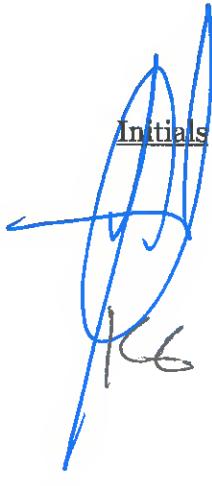
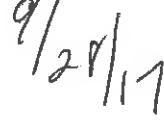
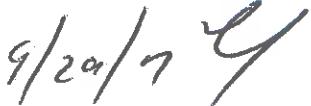
Document: LQD Wi-Fi, LLC – First Amendment

The attached document is an amendment to the consulting agreement for professional services for establishing a municipal technology infrastructure between the City and LQD Wi-Fi, LLC. The amendment reflects a change in the name of the company to Sensity Systems Inc., a successor to LQD Wi-Fi. In addition, the amendment updates the terms regarding placement of the kiosks and establishes the process for working with the City on their installation.

Account: n/a

Amount: n/a

PO/Contract (if applicable): original contract dated 10/5/16

<u>Department</u>	<u>Action Required</u>	<u>Date Rec'd</u>	<u>Date Completed</u>	<u>Initials</u>
Development Luiz Aragon	---	---	9/28/17	
Law Kathleen E. Gill			9/28/17	
City Manager Charles B. Strome, III	Sign/Execute	9/28	9/28/17	

Please return to Adam Salgado in Development

Electronic copies of fully executed agreements will be provided to Legal Department.

Mirinalini Ingram
Vice President, Smart Communities & Venues
One Verizon Way
Basking Ridge, New Jersey 07960

September 20, 2017

Charles B. Strome III
New Rochelle City Manager
City of New Rochelle
515 North Avenue
New Rochelle, NY 10801

Dear Charles:

Reference is made to that Consulting Agreement For Professional Services For Establishing a Municipal Technology Infrastructure, dated August 2015 and associated Rider to the Consulting Agreement (as same has been amended, the Consulting Agreement and associated Rider are hereinafter collectively referred to as the "Consulting Agreement" and any reference to the "Agreement" or "Rider" in such respective documents or this document shall refer to the Consulting Agreement as a whole) between the City of New Rochelle (the "City") and Sensity Systems Inc., successor to LQD Wi-Fi (New Rochelle), LLC, and wholly-owned subsidiary of Verizon Communications Inc. ("SSI").

This letter agreement hereby amends the Consulting Agreement in the following ways:

- All references to the term "LQD" in the Consulting Agreement shall be deleted and replaced by the defined term "SSI" (as defined above). All references to "LQD devices" in the Consulting Agreement shall be deleted and replaced by the term "Verizon Digital Kiosk".
- Paragraph 1. of the Rider shall be deleted and replaced with the following language:

"In accordance with the terms of the RFP, SSI agrees to install, program, maintain, and service in a high quality manner twenty-four (24) Verizon Digital Kiosks in the City at locations agreed upon between the City and SSI and attached hereto as Exhibit A which shall be incorporated into the Consulting Agreement by reference (the "Pilot Program"). SSI endeavors to deploy at least ten (10) Pilot Program Verizon Digital Kiosks, subject to obtaining all necessary approvals, licenses, permits, and/or certifications, by January 31, 2018. SSI expects that any delay in the aforementioned deployment beyond January 31, 2018 would not be more than sixty (60) days, but the City acknowledges that certain delays are beyond SSI's control. SSI and the City agree to work together to determine the deployment schedule for the remaining Pilot Program Verizon

Digital Kiosks, to total twenty-four (24), with an outside target deployment date , subject to obtaining all necessary approvals, licenses, permits, and/or certifications, of December 31, 2018. The Verizon Digital Kiosks included in the Pilot Program will be designed by SSI in connection with its smart city communications infrastructure and installed in the City at locations agreed to and accepted by the City and SSI.”

- Paragraph 2. of the Rider shall be deleted and replaced with the following language:

“The City commits to allow the Pilot Program Verizon Digital Kiosks to be installed and to remain in said locations for a period of no less than ten (10) years, subject to the termination provision in the Consulting Agreement. Following a mutual determination by the City and SSI that the Pilot Program rollout of Verizon Digital Kiosks was successful, and that deploying additional Verizon Digital Kiosks is desirable, the City shall permit additional Verizon Digital Kiosks (“additional kiosks”) to be placed in locations around the City. The actual number of additional kiosks to be installed, if any, and the installation location of such additional kiosks, will be determined within a commercially reasonable time period upon the completion of SSI’s installation of the Verizon Digital Kiosks included in the Pilot Program.”

- Paragraph 5. of the Rider shall be deleted and replaced with the following language:

“Work on this Project shall take place in two (2) phases. Phase 1 is the planning phase which begins with initial Engineering, Site Survey and Investigations as outlined in Section 3c. of the Proposal entitled ‘Methodology’. Phase 2 is Implementation and involves at least the following steps for each of the Verizon Digital Kiosks to be installed: survey the installation site, acquire from the City all specifications and requirements from the providers of electric power, internet service, and phone service to the installation sites, obtain all necessary permits, licenses, approvals, and/or certifications for the installation, set installation schedule with contractors, remove existing concrete at installation site, trench and lay conduit for electric, internet and phone services, coordinate the installation dates with the providers of electric power, internet service and phone service, ship the Verizon Digital Kiosk to the installation site, cast the Verizon Digital Kiosk’s concrete foundation pad and reinforce it with steel, install the electrical power, and communications services, install the internal components of the Verizon Digital Kiosk with antennas, including without limitation, Small Cell Antennas (as hereinafter defined) and the control center, deploy the Verizon Digital Kiosk’s software, activate the Verizon Digital Kiosk’s hardware and software, verify their operation and perform any other work SSI deems necessary to the best operation and performance of the Verizon Digital Kiosks. Notwithstanding anything stated to the contrary in the Consulting Agreement, due to the location and installation of the Verizon Digital Kiosks on

the City's property, the City acknowledges that (a) with respect to the installation, operation and maintenance of the Verizon Digital Kiosk on City property including, without limitation, rights of way, only an administrative street opening permit ("Street Permit") from the Department of Public Works is required for the Verizon Digital Kiosk and no other permits, licenses, agreements, or approvals from the City is required with respect to the installation, operation, and maintenance of each Verizon Digital Kiosk, (b) to the extent that the installation of the Verizon Digital Kiosk is not on property owned or controlled by the City, the City shall cooperate and assist SSI to generally foster an expeditious permit, license, and approval process (e.g., planning, zoning, etc., including, but not limited to, permitting the combining of design drawings – such as foundation and electrical – where appropriate) so that SSI may obtain, in a timely manner, all required permits, licenses, and/or approvals for SSI's installation of, and (if necessary) removal of, the Verizon Digital Kiosk, (c) the project contemplated in this Consulting Agreement (e.g., the implementation of the Verizon Digital Kiosk in the Pilot Program and any additional kiosks agreed upon by the parties) shall be considered a City "sponsored" project and SSI shall receive all benefits typically afforded such projects (e.g., tax relief, engineering fee relief, reduced power usage rates, all permit fee relief etc.), (d) there shall be no charge to SSI in connection with obtaining the Street Permit or any other necessary permits, licenses, or approvals, (e) SSI shall not be responsible for any soil or other environmental testing and shall not be liable for any issues, third-party or otherwise, that arise out of any pre-existing environmental non-compliance, violations, or hazards, and (f) without shifting or otherwise impacting either party's obligation to comply with any applicable ordinance, law, or regulation, the City and SSI shall work together to identify any applicable ordinances, laws, or regulations (e.g., digital signage, advertising, etc.) that may be applicable to the Verizon Digital Kiosks and, as necessary, the City shall provide SSI, and the Verizon Digital Kiosks, an exemption or waiver from complying with any such City or local ordinances, laws, or regulations if legally permissible. "

- The second sentence of Paragraph 6. of the Rider shall be deleted and replaced with the following language:

"The term "electronic cigarette" is defined for this purpose as a battery operated device that contains nicotine and delivers vapor for inhalation. The term "electronic cigarette" shall also include refill cartridges and any other components of an electronic cigarette."

- Paragraph 7. of the Rider shall be deleted and replaced with the following language:

"[RESERVED]"

- Paragraph 8. of the Rider shall be deleted and replaced with the following language:

“SSI agrees to further negotiate with the City at a later date on terms that will govern a project for SSI to work with the City in connection with optimizing the functionality and connectivity of the Verizon Digital Kiosks installed in the City. For the avoidance of doubt, any integration between the Verizon Digital Kiosks and the City’s video management system may be a part of these later discussions and negotiations but such integration is out of scope for the Consulting Agreement and, as such, SSI does not have any obligations in the Consulting Agreement related to such integration.”
- The following language shall be inserted into the Rider as a new Paragraph 9.

“Notwithstanding anything to the contrary in the RFP, the term “Confidential Information” includes all information, documents, and materials relating to SSI, including technical, financial, or business information which is not available to the general public, as well as all information derived from such information, which is furnished or made available to the City, and is clearly labeled, marked or otherwise identified as “confidential” or “proprietary information.” Confidential Information which has been or is disclosed to the City shall be held by the City in confidence, and shall not be used by the City for its advantage in any way and/or made available for third parties to use. The City will direct its employees, contractors, consultants and representatives who have access to any Confidential Information to comply with all the terms of the Consulting Agreement and this Rider. Information received by City shall not be Confidential Information if: (a) it is or becomes available to the public through no wrongful act of the City; (b) it is already in the possession of the City and not subject to any confidentially agreement between the City and SSI; (c) it is received from a third party without restriction for the benefit of SSI and without breach of the Consulting Agreement and this Rider; (d) it is independently developed by the City; or (e) it is disclosed pursuant to a requirement of law or a duly empowered government agency or a court of competent jurisdiction after due notice and an adequate opportunity to intervene is given to SSI, unless such notice is prohibited. Upon termination or expiration of the Consulting Agreement, City shall retain all documents related to this Agreement, including Confidential Information pursuant to the City’s record retention policy, and only following expiration of such record retention period shall the City, at SSI’s direction, either return or destroy all such Confidential Information provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the City or its representatives, or (ii) found in electronic format as part of the City’s off-site or on-site data storage/archival process system, will be held by the City and kept subject to the terms of this provision or destroyed at the City’s option. The obligations of this provision will survive termination or expiration of the Consulting Agreement.”

- The following language shall be inserted into the Rider as a new Paragraph 10:

Neither the City nor SSI shall make any press release or public announcement with respect to the Consulting Agreement or this Rider and/or the transactions contemplated by the Consulting Agreement or this Rider without the prior written consent of the other party which shall not be unreasonably withheld. Furthermore, the City shall not use any SSI or Verizon trademarks or other intellectual property without SSI's prior written consent.

- The following language shall be added to the end of Paragraph 3. of the Consulting Agreement:

"Either party may also terminate the Consulting Agreement if the other party materially breaches the Consulting Agreement and fails to cure such material breach, after written notice from the non-breaching party, either for a period of 30 days or such longer period that is mutually agreed to by the parties (such termination by the non-breaching party shall be considered a termination for "Cause"). The Consulting Agreement may also be terminated in the event that the parties mutually agree to such termination. To the extent the City terminates the Consulting Agreement early for any reason other than for Cause, or SSI terminates the Consulting Agreement early for Cause, and the City and/or SSI, as applicable, desires that any or all of the Verizon Digital Kiosks that have already been installed or partially installed prior to such termination not remain in their locations for a period of ten (10) years or more, the City shall (a) be responsible for all removal and service/facilities decommission costs (including the costs of any required permits, licenses, and/or approvals and decommissioning electric and data) of the Verizon Digital Kiosks, (b) be responsible for all restoration costs (e.g., removing foundation, conduits, cabling, repaving, sidewalk work, engineering and/or environmental work, etc.) related to the removal of the Verizon Digital Kiosks, and (c) reimburse SSI for all prior installation costs (including the costs of any required permits, licenses, and/or approvals) related to such Verizon Digital Kiosks that are being removed; provided, however, that the installation costs that the City would be obligated to reimburse SSI shall depreciate, per Verizon Digital Kiosk, by ten percent (10%) each year that such Verizon Digital Kiosk has been in place in the City. For the avoidance of doubt, in the event that the City terminates the Consulting Agreement early for any reason other than for Cause, or SSI terminates the Consulting Agreement early for Cause, and the City and/or SSI, as applicable, desires that any or all of the Verizon Digital Kiosks that have already been installed or partially installed prior to such termination not remain in their locations for a period of ten (10) years or more, SSI or a subcontractor of SSI (to be approved by the City on a commercially reasonable basis without delay), has the sole right to perform the abovementioned removal, decommission, and/or

restoration in connection with the Verizon Digital Kiosks even though the City agrees to bear those related costs and expenses. SSI agrees to submit an invoice to the City for all such reasonable costs and expenses within a commercially reasonable period of time after the work is completed and the City shall pay same within thirty (30) days of receipt of such invoice from SSI, along with a properly completed City Claim form, and upon audit and approval of the City. To the extent the Consulting Agreement expires on its terms in the normal course, , or in the event that the Consulting Agreement is terminated early by the City for Cause, SSI shall, at its sole cost and expense and within a commercially reasonable period of time, obtain any necessary approvals, licenses, and/or permits to remove the then existing Verizon Digital Kiosks located in the City, decommission the services/facilities, and restore all City-owned property where the kiosks were located back to the original condition immediately prior to this Agreement, excepting any normal wear and tear. ”

- Paragraph 7. of the Consulting Agreement shall be deleted and replaced with the following language:

“SSI may not assign or subcontract the Consulting Agreement to any third-party without the prior written consent of the City, but the City agrees that such consent shall not be unreasonably withheld or delayed. Notwithstanding anything stated in this Agreement and as additional consideration for SSI’s installation of the Verizon Digital Kiosks in the City, SSI shall have the right to license space for small cell antennas and related facilities (collectively the “Small Cell Antennas”) within the Verizon Digital Kiosks to SSI’s affiliates (including, without limitation, New York SMSA Limited Partnership d/b/a Verizon Wireless for wireless communications) and no permits, licenses, or approvals, or related fees, shall be required by the City in connection with the Small Cell Antennas therein beyond the aforementioned Street Permit or this Consulting Agreement.”

- Paragraph 8. of the Consulting Agreement shall be deleted and replaced with the following language:

“As between SSI and the City, SSI shall own and retain all right, title and interest in and to the Verizon Digital Kiosks, all intellectual property rights related to the services supported by the Verizon Digital Kiosks, and any derivative works thereof. The City does not acquire any other rights, express or implied, in the Verizon Digital Kiosks or the related service. The City shall not alter the Verizon Digital Kiosks and shall not affix or connect any accessory equipment or device(s) to the Verizon Digital Kiosks. Additionally, the City shall not, nor shall the City permit a third party to, operate, open, internally inspect and/or handle the inside components that make-up the Verizon Digital Kiosks, alter, maintain, install, remove, or modify the Verizon Digital Kiosks without the prior written

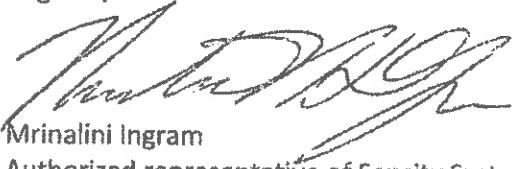
consent of SSI. The City may provide SSI with Feedback (as defined below) concerning the functionality and performance of the Verizon Digital Kiosks. "Feedback" means information relating to the Verizon Digital Kiosk's performance and suggestions for changes, modifications, improvements, and identification of potential errors based on the City's and citizens use and evaluation of the Verizon Digital Kiosks. Feedback and other information which is provided by the City to SSI in connection with the Verizon Digital Kiosks, or the Consulting Agreement may be used by SSI to improve or enhance the Verizon Digital Kiosks and SSI shall own all intellectual property rights in Feedback, and may otherwise exploit such Feedback and information without restriction. All Feedback shall be deemed SSI's Confidential Information. The City will not, and will not permit any third party to resell, sublicense, rent, lease, time-share, copy, modify, create derivative works of, translate, reverse engineer, decompile, disassemble, or otherwise access or use the Verizon Digital Kiosks or the services they provide for purposes of benchmarking or creating a competitive product or for any other use, without SSI's consent. The City shall not publish or disclose to any third party any Feedback relating to the Verizon Digital Kiosks except as required by law or court order (in which case the City will provide prior notice to SSI and will work with SSI, to the extent possible, to provide the minimum publishing or disclosure required. SSI will, upon the City's request, provide the City with aggregated and de-identified data analytics, reports, and/or documentation related to the Verizon Digital Kiosks ("Deliverable(s)'), which may only be used by the City in connection with the Consulting Agreement. SSI shall retain ownership, including all intellectual property rights, in any and all (i) portions of any Deliverable that were not unique to the City and created by SSI in the performance of the Consulting Agreement for and provided to the City, and (ii) all underlying materials owned by SSI that are incorporated into any Deliverable (i.e., materials developed other than as part of the service delivered to the City, such as templates, forms, underlying methodologies) (collectively "SSI Underlying Materials"). To the extent any SSI Underlying Materials are incorporated into any Deliverable, SSI hereby grants to the City for the term of the Consulting Agreement a non-exclusive, royalty-free license to use such SSI Underlying Materials; provided that the City may only use such SSI Underlying Materials in connection with the Deliverable and the Consulting Agreement. The SSI Underlying Materials shall be subject to the confidentiality obligations found in the Consulting Agreement. The City shall retain ownership in any and all underlying materials owned by the City or licensed to the City from third parties (other than SSI) that are provided to SSI for use in connection with the Verizon Digital Kiosks and/or incorporated into any Deliverable (collectively "City Underlying Materials"). SSI's rights to any Deliverable shall be subject to the City's rights to City Underlying Materials. Except as expressly granted herein, the City receives no ownership, license, or other interest in any intellectual property created or delivered by SSI, whether in connection with its performance of the Consulting Agreement or otherwise. The City acknowledges and agrees that,

aside from City Underlying Materials, SSI shall own all data collected or stored as a result of the operation of, or interactions with, the Verizon Digital Kiosks as well as any analytics or performance metrics related thereto.

Except for the foregoing changes, all other provisions of the Consulting Agreement remain unchanged and in full force and effect.

I would appreciate you acknowledging the foregoing changes to the Consulting Agreement by signing below and returning a copy of this letter to me.

Regards,



Mrinalini Ingram
Authorized representative of Sensity Systems Inc.

C.B. S

City of New Rochelle
Charles B. Strome
City Manager, City of New Rochelle

9/29/17

Date

EXHIBIT A

VDK LOCATIONS*

* The City and SSI agree that the parties may need to change one or more of the locations set forth below for various reasons including but not limited to compliance with laws, ordinances, and regulations. SSI shall have the right to change one or more of the locations set forth below within a one hundred (100) foot radius of the given location, if feasible, provided that the City agrees with such change and all relocation costs and expenses are borne solely by SSI. If the City requests a change to one or more of the locations, the City shall either reimburse SSI or pay SSI for all reasonable costs associated with such move including, but not limited to, SSI's expenses in connection with removal and restoration work relating to the original location(s) and additional site surveys.

255 K Main St
719 K Main St
690 K North Ave
794 K North Ave
515 K North Ave
53 K Lockwood Ave
569 K North Avenue
1 K Station Plaza N
264 K Huguenot St
255 K North Ave
33 K Le Count Pl
424 K Main St
384 K Main St
140 K Huguenot St
487 K Main St
1 K The Boulevard
606 K Main St
31 K Division St
519 K Main St
14 K Burling Ln
55 K Weyman Ave
635 K Main St
562 K Main St
637 K North Ave